

104TH CONGRESS
2D SESSION

S. 1732

To implement the obligations of the United States under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, known as “the Chemical Weapons Convention” and opened for signature and signed by the United States on January 13, 1993.

IN THE SENATE OF THE UNITED STATES

MAY 8, 1996

Mr. LUGAR (for himself and Mr. PELL) (by request) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To implement the obligations of the United States under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, known as “the Chemical Weapons Convention” and opened for signature and signed by the United States on January 13, 1993.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Chemical Weapons
5 Convention Implementation Act of 1995.”

1 **SEC. 2. TABLE OF CONTENTS.**

2 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Congressional findings.
- Sec. 4. Congressional declarations.
- Sec. 5. Definitions.
- Sec. 6. Severability.

TITLE I—NATIONAL AUTHORITY

Sec. 101. Establishment.

TITLE II—APPLICATION OF CONVENTION PROHIBITIONS TO
NATURAL AND LEGAL PERSONS

- Sec. 201. Criminal provisions.
- Sec. 202. Effective date.
- Sec. 203. Restrictions on scheduled chemicals.

TITLE III—REPORTING

- Sec. 301. Reporting of information.
- Sec. 302. Confidentiality of information.
- Sec. 303. Prohibited acts.

TITLE IV—INSPECTIONS

- Sec. 401. Inspections pursuant to article VI of the Chemical Weapons Convention.
- Sec. 402. Other inspections pursuant to the Chemical Weapons Convention and lead agency.
- Sec. 403. Prohibited acts.
- Sec. 404. Penalties.
- Sec. 405. Specific enforcement.
- Sec. 406. Legal proceedings.
- Sec. 407. Authority.
- Sec. 408. Saving provision.

3 **SEC. 3. CONGRESSIONAL FINDINGS.**

4 The Congress makes the following findings:

- 5 (1) Chemical weapons pose a significant threat
- 6 to the national security of the United States and are
- 7 a scourge to humankind.
- 8 (2) The Chemical Weapons Convention is the
- 9 best means of ensuring the nonproliferation of chem-

1 ical weapons and their eventual destruction and for-
2 swearing by all nations.

3 (3) The verification procedures contained in the
4 Chemical Weapons Convention and the faithful ad-
5 herence of nations to them, including the United
6 States, are crucial to the success of the Convention.

7 (4) The declarations and inspections required
8 by the Chemical Weapons Convention are essential
9 for the effectiveness of the verification regime.

10 **SEC. 4. CONGRESSIONAL DECLARATIONS.**

11 The Congress makes the following declarations:

12 (1) It shall be the policy of the United States
13 to cooperate with other states parties to the Chemi-
14 cal Weapons Convention and to afford the appro-
15 priate form of legal assistance to facilitate the imple-
16 mentation of the prohibitions contained in title II of
17 this Act.

18 (2) It shall be the policy of the United States,
19 during the implementation of its obligations under
20 the Chemical Weapons Convention, to assign the
21 highest priority to ensuring the safety of people and
22 to protecting the environment, and to cooperate as
23 appropriate with other states parties to the Conven-
24 tion in this regard.

1 (3) It shall be the policy of the United States
2 to minimize, to the greatest extent practicable, the
3 administrative burden and intrusiveness of measures
4 to implement the Chemical Weapons Convention
5 placed on commercial and other private entities, and
6 to take into account the possible competitive impact
7 of regulatory measures on industry, consistent with
8 the obligations of the United States under the Con-
9 vention.

10 **SEC. 5. DEFINITIONS.**

11 (a) IN GENERAL.—Except as otherwise provided in
12 this Act, the definitions of the terms used in this Act shall
13 be those contained in the Chemical Weapons Convention.
14 Nothing in paragraphs 2 or 3 of article II of the Chemical
15 Weapons Convention shall be construed to limit verifica-
16 tion activities pursuant to parts X or XI of the Annex
17 on Implementation and Verification of the Convention.

18 (b) OTHER DEFINITIONS.—

19 (1) The term “Chemical Weapons Convention”
20 means the Convention on the Prohibition of the De-
21 velopment, Production, Stockpiling and Use of
22 Chemical Weapons and on Their Destruction,
23 opened for signature on January 13, 1993.

24 (2) The term “national of the United States”
25 has the same meaning given such term in section

1 101(a)(22) of the Immigration and Nationality Act
2 (8 U.S.C. 1101(a)(22)).

3 (3) The term “United States,” when used in a
4 geographical sense, includes all places under the ju-
5 risdiction or control of the United States, including
6 (A) any of the places within the provisions of section
7 101(41) of the Federal Aviation Act of 1958, as
8 amended (49 U.S.C. App. Sec. 1301(41)), (B) any
9 public aircraft or civil aircraft of the United States,
10 as such terms are defined in sections 101(36) and
11 (18) of the Federal Aviation Act of 1958, as amend-
12 ed (49 U.S.C. App. Secs. 1301(36) and 1301(18)),
13 and (C) any vessel of the United States, as such
14 term is defined in section 3(b) of the Maritime Drug
15 Enforcement Act, as amended (46 U.S.C. App. Sec.
16 1903(b)).

17 (4) The term “person,” except as used in sec-
18 tion 201 of this Act and as set forth below, means
19 (A) any individual, corporation, partnership, firm,
20 association, trust, estate, public or private institu-
21 tion, any State or any political subdivision thereof,
22 or any political entity within a State, any foreign
23 government or nation or any agency, instrumentality
24 or political subdivision of any such government or
25 nation, or other entity located in the United States;

1 and (B) any legal successor, representative, agent or
2 agency of the foregoing located in the United States.
3 The phrase “located in the United States” in the
4 term “person” shall not apply to the term “person”
5 as used in the phrases “person located outside the
6 territory” in sections 203(b) and 302(d) of this Act
7 and “person located in the territory” in section
8 203(b) of this Act.

9 (5) The term “Technical Secretariat” means
10 the Technical Secretariat of the Organization for the
11 Prohibition of Chemical Weapons established by the
12 Chemical Weapons Convention.

13 **SEC. 6. SEVERABILITY.**

14 If any provision of this Act, or the application of such
15 provision to any person or circumstance, is held invalid,
16 the remainder of this Act, or the application of such provi-
17 sion to persons or circumstances other than those as to
18 which it is held invalid, shall not be affected thereby.

19 **TITLE I—NATIONAL AUTHORITY**

20 **SEC. 101. ESTABLISHMENT.**

21 Pursuant to paragraph 4 of article VII of the Chemi-
22 cal Weapons Convention, the President or the designee of
23 the President shall establish the “United States National
24 Authority” to, inter alia, serve as the national focal point
25 for effective liaison with the Organization for the Prohibi-

tion of Chemical Weapons and other States Parties to the
Convention.

TITLE II—APPLICATION OF CONVENTION
PROHIBITIONS TO NATURAL AND
LEGAL PERSONS

SEC. 201. CRIMINAL PROVISIONS.

(a) IN GENERAL.—Part I of title 18, United States
Code, is amended by—

(1) redesignating chapter 11A relating to child
support as chapter 11B; and

(2) inserting after chapter 11 relating to brib-
ery, graft and conflicts of interest the following new
chapter:

“CHAPTER 11A—CHEMICAL WEAPONS

“Sec.

“227. Penalties and prohibitions with respect to chemical weapons.

“227A. Seizure, forfeiture, and destruction.

“227B. Injunctions.

“227C. Other prohibitions.

“227D. Definitions.

“SEC. 227. PENALTIES AND PROHIBITIONS WITH RESPECT
TO CHEMICAL WEAPONS.

“(a) IN GENERAL.—Except as provided in subsection
(b), whoever knowingly develops, produces, otherwise ac-
quires, stockpiles, retains, directly or indirectly transfers,
uses, owns or possesses any chemical weapon, or know-
ingly assists, encourages or induces, in any way, any per-
son to do so, or attempts or conspires to do so, shall be

1 fined under this title or imprisoned for life or any term
2 of years, or both.

3 “(b) EXCLUSION.—Subsection (a) shall not apply to
4 the retention, ownership or possession of a chemical weap-
5 on, that is permitted by the Chemical Weapons Convention
6 pending the weapon’s destruction, by any agency or de-
7 partment of the United States. This exclusion shall apply
8 to any person, including members of the Armed Forces
9 of the United States, who is authorized by any agency or
10 department of the United States to retain, own or possess
11 a chemical weapon, unless that person knows or should
12 have known that such retention, ownership or possession
13 is not permitted by the Chemical Weapons Convention.

14 “(c) JURISDICTION.—There is jurisdiction by the
15 United States over the prohibited activity in subsection (a)
16 if (1) the prohibited activity takes place in the United
17 States or (2) the prohibited activity takes place outside
18 of the United States and is committed by a national of
19 the United States.

20 “(d) ADDITIONAL PENALTY.—The court shall order
21 that any person convicted of any offense under this section
22 pay to the United States any expenses incurred incident
23 to the seizure, storage, handling, transportation and de-
24 struction or other disposition of property seized for the
25 violation of this section.

1 **“SEC. 227A. SEIZURE, FORFEITURE, AND DESTRUCTION.**

2 “(a) SEIZURE.—

3 “(1) Except as provided in paragraph (2), the
 4 Attorney General may request the issuance, in the
 5 same manner as provided for a search warrant, of
 6 a warrant authorizing the seizure of any chemical
 7 weapon defined in section 227D(2)(A) of this title
 8 that is of a type or quantity that under the cir-
 9 cumstances is inconsistent with the purposes not
 10 prohibited under the Chemical Weapons Convention.

11 “(2) In exigent circumstances, seizure and de-
 12 struction of any such chemical weapon described in
 13 paragraph (1) may be made by the Attorney General
 14 upon probable cause without the necessity for a war-
 15 rant.

16 “(b) PROCEDURE FOR FORFEITURE AND DESTRUC-
 17 TION.—Except as provided in paragraph (2) of subsection
 18 (a), property seized pursuant to subsection (a) shall be
 19 forfeited to the United States after notice to potential
 20 claimants and an opportunity for a hearing. At such a
 21 hearing, the Government shall bear the burden of persua-
 22 sion by a preponderance of the evidence. Except as incon-
 23 sistent herewith, the provisions of chapter 46 of this title
 24 relating to civil forfeitures shall extend to a seizure or for-
 25 feiture under this section. The Attorney General shall pro-
 26 vide for the destruction or other appropriate disposition

1 of any chemical weapon seized and forfeited pursuant to
2 this section.

3 “(c) AFFIRMATIVE DEFENSE.—It is an affirmative
4 defense against a forfeiture under subsection (b) that—

5 “(1) such alleged chemical weapon is for a pur-
6 pose not prohibited under the Chemical Weapons
7 Convention; and

8 “(2) such alleged chemical weapon is of a type
9 and quantity that under the circumstances is con-
10 sistent with the purpose.

11 “(d) OTHER SEIZURE, FORFEITURE, AND DESTRUC-
12 TION.—

13 “(1) Except as provided in paragraph (2), the
14 Attorney General may request the issuance, in the
15 same manner as provided for a search warrant, of
16 a warrant authorizing the seizure of any chemical
17 weapon defined in section 227D(2) (B) or (C) of
18 this title that exists by reason of conduct prohibited
19 under section 227 of this title.

20 “(2) In exigent circumstances, seizure and de-
21 struction of any such chemical weapon described in
22 paragraph (1) may be made by the Attorney General
23 upon probable cause without the necessity for a war-
24 rant.

1 “(3) Property seized pursuant to this sub-
2 section shall be summarily forfeited to the United
3 States and destroyed.

4 “(e) ASSISTANCE.—The Attorney General may re-
5 quest assistance from any agency or department in the
6 handling, storage, transportation or destruction of prop-
7 erty seized under this section.

8 “(f) OWNER LIABILITY.—The owner or possessor of
9 any property seized under this section shall be liable to
10 the United States for any expenses incurred incident to
11 the seizure, including any expenses relating to the han-
12 dling, storage, transportation and destruction or other dis-
13 position of the seized property.

14 **“SEC. 227B. INJUNCTIONS.**

15 “(a) IN GENERAL.—The United States may obtain
16 in a civil action an injunction against—

17 “(1) the conduct prohibited under section 227
18 of this title;

19 “(2) the preparation or solicitation to engage in
20 conduct prohibited under section 227 of this title; or

21 “(3) the development, production, other acquisi-
22 tion, stockpiling, retention, direct or indirect trans-
23 fer, use, ownership or possession, or the attempted
24 development, production, other acquisition, stock-
25 piling, retention, direct or indirect transfer, use,

1 ownership or possession, of any alleged chemical
2 weapon defined in section 227D(2)(A) of this title
3 that is of a type or quantity that under the cir-
4 cumstances is inconsistent with the purposes not
5 prohibited under the Chemical Weapons Convention,
6 or the assistance to any person to do so.

7 “(b) AFFIRMATIVE DEFENSE.—It is an affirmative
8 defense against an injunction under subsection (a)(3)
9 that—

10 “(1) the conduct sought to be enjoined is for a
11 purpose not prohibited under the Chemical Weapons
12 Convention; and

13 “(2) such alleged chemical weapon is of a type
14 and quantity that under the circumstances is con-
15 sistent with that purpose.

16 **“SEC. 227C. OTHER PROHIBITIONS.**

17 “(a) IN GENERAL.—Except as provided in subsection
18 (b), whoever knowingly uses riot control agents as a meth-
19 od of warfare, or knowingly assists any person to do so,
20 shall be fined under this title or imprisoned for a term
21 of not more than ten years, or both.

22 “(b) EXCLUSION.—Subsection (a) shall not apply to
23 members of the Armed Forces of the United States. Mem-
24 bers of the Armed Forces of the United States who use

1 riot control agents as a method of warfare shall be subject
 2 to appropriate military penalties.

3 (c) JURISDICTION.—There is jurisdiction by the
 4 United States over the prohibited activity in subsection (a)
 5 if (1) the prohibited activity takes place in the United
 6 States or (2) the prohibited activity takes place outside
 7 of the United States and is committed by a national of
 8 the United States.

9 **“SEC. 227D. DEFINITIONS.**

10 “As used in this chapter, the term—

11 “(1) ‘Chemical Weapons Convention’ means the
 12 Convention on the Prohibition of the Development,
 13 Production, Stockpiling and Use of Chemical Weap-
 14 ons and on Their Destruction, opened for signature
 15 on January 13, 1993;

16 “(2) ‘chemical weapon’ means the following, to-
 17 gether or separately:

18 “(A) a toxic chemical and its precursors,
 19 except where intended for a purpose not prohib-
 20 ited under the Chemical Weapons Convention,
 21 as long as the type and quantity is consistent
 22 with such a purpose;

23 “(B) a munition or device, specifically de-
 24 signed to cause death or other harm through
 25 the toxic properties of those toxic chemicals

1 specified in subparagraph (A), which would be
2 released as a result of the employment of such
3 munition or device; or

4 “(C) any equipment specifically designed
5 for use directly in connection with the employ-
6 ment of munitions or devices specified in sub-
7 paragraph (B);

8 “(3) ‘toxic chemical’ means any chemical which
9 through its chemical action on life processes can
10 cause death, temporary incapacitation or permanent
11 harm to humans or animals. This includes all such
12 chemicals, regardless of their origin or of their meth-
13 od of production, and regardless of whether they are
14 produced in facilities, in munitions or elsewhere.
15 (For the purpose of implementing the Chemical
16 Weapons Convention, toxic chemicals which have
17 been identified for the application of verification
18 measures are listed in Schedules contained in the
19 Annex on Chemicals of the Chemical Weapons Con-
20 vention.);

21 “(4) ‘precursor’ means any chemical reactant
22 which takes part at any stage in the production by
23 whatever method of a toxic chemical. This includes
24 any key component of a binary or multicomponent
25 chemical system. (For the purpose of implementing

1 the Chemical Weapons Convention, precursors which
2 have been identified for the application of verifica-
3 tion measures are listed in Schedules contained in
4 the Annex on Chemicals of the Chemical Weapons
5 Convention.);

6 “(5) ‘key component of a binary or multicompo-
7 nent chemical system’ means the precursor which
8 plays the most important role in determining the
9 toxic properties of the final product and reacts rap-
10 idly with other chemicals in the binary or multi-
11 component system;

12 “(6) ‘purpose not prohibited under the Chemi-
13 cal Weapons Convention’ means—

14 “(A) industrial, agricultural, research,
15 medical, pharmaceutical or other peaceful pur-
16 poses;

17 “(B) protective purposes, namely those
18 purposes directly related to protection against
19 toxic chemicals and to protection against chemi-
20 cal weapons;

21 “(C) military purposes not connected with
22 the use of chemical weapons and not dependent
23 on the use of the toxic properties of chemicals
24 as a method of warfare; or

1 “(D) law enforcement purposes, including
2 domestic riot control purposes;

3 “(7) ‘national of the United States’ has the
4 same meaning given such term in section 101(a)(22)
5 of the Immigration and Nationality Act (8 U.S.C.
6 1101(a)(22));

7 “(8) ‘United States,’ when used in a geographi-
8 cal sense, includes all places under the jurisdiction
9 or control of the United States, including (A) any of
10 the places within the provisions of section 101(41)
11 of the Federal Aviation Act of 1958, as amended
12 (49 U.S.C. App. Sec. 1301(41)), (B) any public air-
13 craft or civil aircraft of the United States, as such
14 terms are defined in sections 101(36) and (18) of
15 the Federal Aviation Act of 1958, as amended (49
16 U.S.C. App. Secs. 1301(36) and 1301(18)), and (C)
17 any vessel of the United States, as such term is de-
18 fined in section 3(b) of the Maritime Drug Enforce-
19 ment Act, as amended (46 U.S.C. App. Sec.
20 1903(b));

21 “(9) ‘person’ means (A) any individual, cor-
22 poration, partnership, firm, association, trust, estate,
23 public or private institution, any State or any politi-
24 cal subdivision thereof, or any political entity within
25 a State, any foreign government or nation or any

1 agency, instrumentality or political subdivision of
 2 any such government or nation, or other entity; and
 3 (B) any legal successor, representative, agent or
 4 agency of the foregoing; and

5 “(10) ‘riot control agent’ means any chemical
 6 not listed in a Schedule in the Annex on Chemicals
 7 of the Chemical Weapons Convention, which can
 8 produce rapidly in humans sensory irritation or dis-
 9 abling physical effects which disappear within a
 10 short time following termination of exposure.

11 “Nothing in paragraphs (3) or (4) of this section shall
 12 be construed to limit verification activities pursuant to
 13 Part X or Part XI of the Annex on Implementation and
 14 Verification of the Chemical Weapons Convention.”.

15 (b) CLERICAL AMENDMENTS.—The table of chapters
 16 for part I of title 18, United States Code, is amended by—

17 (1) in the item for chapter 11A relating to child
 18 support, redesignating “11A” as “11B”; and

19 (2) inserting after the item for chapter 11 the
 20 following new item:

“11A. CHEMICAL WEAPONS

227.”

21 **SEC. 202. EFFECTIVE DATE.**

22 This title shall take effect on the date the Chemical
 23 Weapons Convention enters into force for the United
 24 States.

1 **SEC. 203. RESTRICTIONS ON SCHEDULED CHEMICALS.**

2 (a) SCHEDULE 1 ACTIVITIES.—It shall be unlawful
3 for any person, or any national of the United States lo-
4 cated outside the United States, to produce, acquire, re-
5 tain, transfer or use a chemical listed on Schedule 1 of
6 the Annex on Chemicals of the Chemical Weapons Conven-
7 tion, unless—

8 (1) the chemicals are applied to research, medi-
9 cal, pharmaceutical or protective purposes;

10 (2) the types and quantities of chemicals are
11 strictly limited to those that can be justified for such
12 purposes; and

13 (3) the amount of such chemicals per person at
14 any given time for such purposes does not exceed a
15 limit to be determined by the United States National
16 Authority, but in any case, does not exceed one met-
17 ric ton.

18 (b) EXTRATERRITORIAL ACTS.

19 (1) It shall be unlawful for any person, or any
20 national of the United States located outside the
21 United States, to produce, acquire, retain or use a
22 chemical listed on Schedule 1 of the Annex on
23 Chemicals of the Chemical Weapons Convention out-
24 side the territories of the states parties to the Con-
25 vention or to transfer such chemicals to any person
26 located outside the territory of the United States,

1 except as provided for in the Convention for transfer
2 to a person located in the territory of another State
3 Party to the Convention.

4 (2) Beginning three years after the entry into
5 force of the Chemical Weapons Convention, it shall
6 be unlawful for any person, or any national of the
7 United States located outside the United States, to
8 transfer a chemical listed on schedule 2 of the
9 Annex on Chemicals of the Convention to any person
10 located outside the territory of a State Party to the
11 Convention or to receive such a chemical from any
12 person located outside the territory of a State Party
13 to the Convention.

14 (c) JURISDICTION.—There is jurisdiction by the
15 United States over the prohibited activity in subsections
16 (a) and (b) if (1) the prohibited activity takes place in
17 the United States or (2) the prohibited activity takes place
18 outside of the United States and is committed by a na-
19 tional of the United States.

20 **TITLE III—REPORTING**

21 **SEC. 301. REPORTING OF INFORMATION.**

22 (a) REPORTS.—The Department of Commerce shall
23 promulgate regulations under which each person who pro-
24 duces, processes, consumes, exports or imports, or pro-
25 poses to produce, process, consume, export or import, a

1 chemical substance subject to the Chemical Weapons Con-
2 vention shall maintain and permit access to such records
3 and shall submit to the Department of Commerce such
4 reports as the United States National Authority may rea-
5 sonably require pursuant to the Chemical Weapons Con-
6 vention. The Department of Commerce shall promulgate
7 regulations pursuant to this title expeditiously, taking into
8 account the written decisions issued by the Organization
9 for the Prohibition of Chemical Weapons, and; may amend
10 or change such regulations as necessary.

11 (b) COORDINATION.—To the extent feasible, the
12 United States National Authority shall not require any re-
13 porting that is unnecessary, or duplicative of reporting re-
14 quired under any other Act. Agencies and departments
15 shall coordinate their actions with other agencies and de-
16 partments to avoid duplication of reporting by the affected
17 persons under this Act or any other Act.

18 **SEC. 302. CONFIDENTIALITY OF INFORMATION.**

19 (a) FREEDOM OF INFORMATION ACT EXEMPTION
20 FOR CERTAIN CHEMICAL WEAPONS CONVENTION INFOR-
21 MATION.—Any information reported to, or otherwise ob-
22 tained by, the United States National Authority, the De-
23 partment of Commerce, or any other agency or depart-
24 ment under this Act or under the Chemical Weapons Con-

1 vention shall not be required to be publicly disclosed pur-
2 suant to section 552 of Title 5, United States Code.

3 (b) PROHIBITED DISCLOSURE AND EXCEPTIONS.—
4 Information exempt from disclosure under subsection (a)
5 shall not be published or disclosed, except that such infor-
6 mation—

7 (1) shall be disclosed or otherwise provided to
8 the Technical Secretariat or other States Parties to
9 the Chemical Weapons Convention in accordance
10 with the Convention, in particular, the provisions of
11 the Annex on the Protection of Confidential Infor-
12 mation;

13 (2) shall be made available to any committee or
14 subcommittee of Congress of appropriate jurisdiction
15 upon the written request of the chairman or ranking
16 minority member of such committee or subcommit-
17 tee, except that no such committee or subcommittee,
18 or member thereof, shall disclose such information
19 or material;

20 (3) shall be disclosed to other agencies or de-
21 partments for law enforcement purposes with regard
22 to this Act or any other Act, and may be disclosed
23 or otherwise provided when relevant in any proceed-
24 ing under this Act or any other Act, except that dis-
25 closure or provision in such a proceeding shall be

1 made in such manner as to preserve confidentiality
2 to the extent practicable without impairing the pro-
3 ceeding; and

4 (4) may be disclosed, including in the form of
5 categories of information, if the United States Na-
6 tional Authority determines that such disclosure is
7 in the national interest.

8 (c) NOTICE OF DISCLOSURE.—If the United States
9 National Authority, pursuant to subsection (b)(4), pro-
10 poses to publish or disclose or otherwise provide informa-
11 tion exempted from disclosure in subsection (a), the
12 United States National Authority shall, where appro-
13 priate, notify the person who submitted such information
14 of the intent to release such information. Where notice has
15 been provided, the United States National Authority may
16 not release such information until the expiration of 30
17 days after notice has been provided.

18 (d) CRIMINAL PENALTY FOR WRONGFUL DISCLO-
19 SURE.—Any officer or employee of the United States or
20 former officer or employee of the United States, who by
21 virtue of such employment or official position has obtained
22 possession of, or has access to, information the disclosure
23 or other provision of which is prohibited by subsection (a),
24 and who knowing that disclosure or provision of such in-
25 formation is prohibited by such subsection, willfully dis-

1 closes or otherwise provides the information in any man-
2 ner to any person, including persons located outside the
3 territory of the United States, not entitled to receive it,
4 shall be fined under title 18, United States Code, or im-
5 prisoned for not more than five years, or both.

6 (e) INTERNATIONAL INSPECTORS.—The provisions of
7 this section on disclosure or provision of information shall
8 also apply to employees of the Technical Secretariat.

9 **SEC. 303. PROHIBITED ACTS.**

10 It shall be unlawful for any person to fail or refuse
11 to (a) establish or maintain records, (b) submit reports,
12 notices, or other information to the Department of Com-
13 merce or the United States National Authority, or (c) per-
14 mit access to or copying of records, as required by this
15 Act or a regulation thereunder.

16 **TITLE IV—INSPECTIONS**

17 **SEC. 401. INSPECTIONS PURSUANT TO ARTICLE VI OF THE**
18 **CHEMICAL WEAPONS CONVENTION.**

19 (a) AUTHORITY.—For purposes of administering this
20 Act—

21 (1) any duly designated member of an inspec-
22 tion team of the Technical Secretariat may inspect
23 any plant, plant site, or other facility or location in
24 the United States subject to inspection pursuant to
25 the Chemical Weapons Convention; and

1 (2) the National Authority shall designate rep-
2 representatives who may accompany members of an in-
3 spection team of the Technical Secretariat during
4 the inspection specified in paragraph (1). The num-
5 ber of duly designated representatives shall be kept
6 to the minimum necessary.

7 (b) NOTICE.—An inspection pursuant to subsection
8 (a) may be made only upon issuance of a written notice
9 to the owner and to the operator, occupant, or agent in
10 charge of the premises to be inspected, except that failure
11 to receive a notice shall not be a bar to the conduct of
12 an inspection. The notice shall be submitted to the owner
13 and to the operator, occupant, or agent in charge as soon
14 as possible after the United States National Authority re-
15 ceives it from the Technical Secretariat. The notice shall
16 include all appropriate information supplied by the Tech-
17 nical Secretariat to the United States National Authority
18 regarding the basis for the selection of the plant site,
19 plant, or other facility or location for the type of inspection
20 sought, including, for challenge inspections pursuant to
21 article IX of the Chemical Weapons Convention, appro-
22 priate evidence or reasons provided by the requesting
23 State Party to the Convention with regard to its concerns
24 about compliance with the Chemical Weapons Convention
25 at the facility or location. A separate notice shall be given

1 for each such inspection, but a notice shall not be required
2 for each entry made during the period covered by the in-
3 spection.

4 (c) CREDENTIALS.—If the owner, operator, occupant
5 or agent in charge of the premises to be inspected is
6 present, a member of the inspection team of the Technical
7 Secretariat, as well as, if present, the representatives of
8 agencies or departments, shall present appropriate creden-
9 tials before the inspection is commenced.

10 (d) TIME FRAME FOR INSPECTIONS.—Consistent
11 with the provisions of the Chemical Weapons Convention,
12 each inspection shall be commenced and completed with
13 reasonable promptness and shall be conducted at reason-
14 able times, within reasonable limits, and in a reasonable
15 manner. The Department of Commerce shall endeavor to
16 ensure that, to the extent possible, each inspection is com-
17 menced, conducted and concluded during ordinary work-
18 ing hours, but no inspection shall be prohibited or other-
19 wise disrupted for commencing, continuing or concluding
20 during other hours. However, nothing in this subsection
21 shall be interpreted as modifying the time frames estab-
22 lished in the Chemical Weapons Convention.

23 (e) SCOPE.—

24 (1) Except as provided in paragraph (2) of this
25 subsection and subsection (f), an inspection con-

1 ducted under this title may extend to all things with-
2 in the premises inspected (including records, files,
3 papers, processes, controls, structures and vehicles)
4 related to whether the requirements of the Chemical
5 Weapons Convention applicable to such premises
6 have been complied with.

7 (2) To the extent possible consistent with the
8 obligations of the United States pursuant to the
9 Chemical Weapons Convention, no inspection under
10 this title shall extend to—

11 (A) financial data;

12 (B) sales and marketing data (other than
13 shipment data);

14 (C) pricing data;

15 (D) personnel data;

16 (E) research data;

17 (F) patent data;

18 (G) data maintained for compliance with
19 environmental or occupational health and safety
20 regulations; or

21 (H) personnel and vehicles entering and
22 personnel and personal passenger vehicles
23 exiting the facility.

24 (f) FACILITY AGREEMENTS.—

1 (1) Inspections of plants, plant sites, or other
2 facilities or locations for which the United States
3 has a facility agreement with the Organization for
4 the Prohibition of Chemical Weapons shall be con-
5 ducted in accordance with the facility agreement.

6 (2) Facility agreements shall be concluded for
7 plants, plant sites, or other facilities or locations
8 that are subject to inspection pursuant to paragraph
9 4 of article VI of the Chemical Weapons Convention
10 unless the owner and the operator, occupant or
11 agent in charge of the facility and the Technical
12 Secretariat agree that such an agreement is not nec-
13 essary. Facility agreements should be concluded for
14 plants, plant sites, or other facilities or locations
15 that are subject to inspection pursuant to para-
16 graphs 5 or 6 of article VI of the Chemical Weapons
17 Convention if so requested by the owner and the op-
18 erator, occupant or agent in charge of the facility.

19 (3) The owner and the operator, occupant or
20 agent in charge of a facility shall be notified prior
21 to the development of the agreement relating to that
22 facility and, if they so request, may participate in
23 the preparations for the negotiation of such an
24 agreement. To the extent practicable consistent with
25 the Chemical Weapons Convention, the owner and

1 the operator, occupant or agent in charge of a facil-
2 ity may observe negotiations of the agreement be-
3 tween the United States and the Organization for
4 the Prohibition of Chemical Weapons concerning
5 that facility.

6 (g) SAMPLING AND SAFETY.—

7 (1) The Department of Commerce is authorized
8 to require the provision of samples to a member of
9 the inspection team of the Technical Secretariat in
10 accordance with the provisions of the Chemical
11 Weapons Convention. The owner or the operator, oc-
12 cupant or agent in charge of the premises to be in-
13 spected shall determine whether the sample shall be
14 taken by representatives of the premises or the in-
15 spection team or other individuals present.

16 (2) In carrying out their activities, members of
17 the inspection team of the Technical Secretariat and
18 representatives of agencies or departments accom-
19 panying the inspection team shall observe safety reg-
20 ulations established at the premises to be inspected,
21 including those for protection of controlled environ-
22 ments within a facility and for personal safety.

23 (h) COORDINATION.—To the extent possible consist-
24 ent with the obligations of the United States pursuant to
25 the Chemical Weapons Convention, the representative of

1 the United States National Authority, the Department of
 2 Commerce and any other agency or department, if
 3 present, shall assist the owner and the operator, occupant
 4 or agent in charge of the premises to be inspected in inter-
 5 acting with the members of the inspection team of the
 6 Technical Secretariat.

7 **SEC. 402. OTHER INSPECTIONS PURSUANT TO THE CHEMI-**
 8 **CAL WEAPONS CONVENTION AND LEAD**
 9 **AGENCY**

10 (a) OTHER INSPECTIONS.—The provisions of this
 11 title shall apply, as appropriate, to all other inspections
 12 authorized by the Chemical Weapons Convention. For all
 13 inspections other than those conducted pursuant to para-
 14 graphs 4, 5 or 6 of Article VI of the Convention, the term
 15 “Department of Commerce” shall be replaced by the term
 16 “Lead Agency” in section 401.

17 (b) LEAD AGENCY.—For the purpose of this title, the
 18 term “Lead Agency” means the agency or department
 19 designated by the President or the designee of the Presi-
 20 dent to exercise the functions and powers set forth in the
 21 specific provision, based, inter alia, on the particular re-
 22 sponsibilities of the agency or department within the Unit-
 23 ed States Government and the relationship of the agency
 24 or department to the premises to be inspected.

1 **SEC. 403. PROHIBITED ACTS.**

2 It shall be unlawful for any person to fail or refuse
3 to permit entry or inspection, or to disrupt, delay or other-
4 wise impede an inspection as required by this Act or the
5 Chemical Weapons Convention.

6 **SEC. 404. PENALTIES.**

7 (a) CIVIL.—

8 (1) (A) Any person who violates a provision of
9 section 203 of this Act shall be liable to the United
10 States for a civil penalty in an amount not to exceed
11 \$50,000 for each such violation.

12 (B) Any person who violates a provision of sec-
13 tion 303 of this Act shall be liable to the United
14 States for a civil penalty in an amount not to exceed
15 \$5,000 for each such violation.

16 (C) Any person who violates a provision of section
17 403 of this Act shall be liable to the United States for
18 a civil penalty in an amount not to exceed \$25,000 for
19 each such violation. For purposes of this subsection, each
20 day such a violation of section 403 continues shall con-
21 stitute a separate violation of section 403.

22 (2) (A) A civil penalty for a violation of section
23 203, 303 or 403 of this Act shall be assessed by the
24 Lead Agency by an order made on the record after
25 opportunity (provided in accordance with this sub-
26 paragraph) for a hearing in accordance with section

1 554 of title 5, United States Code. Before issuing
2 such an order, the Lead Agency shall give written
3 notice to the person to be assessed a civil penalty
4 under such order of the Lead Agency's proposal to
5 issue such order and provide such person an oppor-
6 tunity to request, within 15 days of the date the no-
7 tice is received by such person, such a hearing on
8 the order.

9 (B) In determining the amount of a civil pen-
10 alty, the Lead Agency shall take into account the
11 nature, circumstances, extent and gravity of the vio-
12 lation or violations and, with respect to the violator,
13 ability to pay, effect on ability to continue to do
14 business, any history of prior such violations, the de-
15 gree of culpability, the existence of an internal com-
16 pliance program, and such other matters as justice
17 may require.

18 (C) The Lead Agency may compromise, modify
19 or remit, with or without conditions, any civil pen-
20 alty which may be imposed under this subsection.
21 The amount of such penalty, when finally deter-
22 mined, or the amount agreed upon in compromise,
23 maybe deducted from any sums owing by the United
24 States to the person charged.

1 (3) Any person who requested in accordance
2 with paragraph (2)(A) a hearing respecting the as-
3 sessment of a civil penalty and who is aggrieved by
4 an order assessing a civil penalty may file a petition
5 for judicial review of such order with the United
6 States Court of Appeals for the District of Columbia
7 Circuit or for any other circuit in which such person
8 resides or transacts business. Such a petition may be
9 filed only within the 30-day period beginning on the
10 date the order making such assessment was issued.

11 (4) If any person fails to pay an assessment of
12 a civil penalty—

13 (A) after the order making the assessment
14 has become a final order and if such person
15 does not file a petition for judicial review of the
16 order in accordance with paragraph (3); or

17 (B) after a court in an action brought
18 under paragraph (3) has entered a final judg-
19 ment in favor of the Lead Agency;

20 the Attorney General shall recover the amount as-
21 sessed (plus interest at currently prevailing rates
22 from the date of the expiration of the 30-day period
23 referred to in paragraph (3) or the date of such final
24 judgment, as the case may be) in an action brought
25 in any appropriate district court of the United

1 States. In such an action, the validity, amount and
2 appropriateness of such penalty shall not be subject
3 to review.

4 (b) CRIMINAL.—Any person who knowingly violates
5 any provision of section 203, 303 or 403 of this Act, shall,
6 in addition to or in lieu of any civil penalty which may
7 be imposed under subsection (a) for such violation, be
8 fined under title 18, United States Code, imprisoned for
9 not more than two years, or both.

10 **SEC. 405. SPECIFIC ENFORCEMENT.**

11 (a) JURISDICTION.—The district courts of the United
12 States shall have jurisdiction over civil actions to—

13 (1) restrain any violation of section 203, 303 or
14 403 of this Act; and

15 (2) compel the taking of any action required by
16 or under this Act or the Chemical Weapons Conven-
17 tion.

18 (b) CIVIL ACTIONS.—A civil action described in sub-
19 section (a) may be brought—

20 (1) in the case of a civil action described in sub-
21 section (a)(1), in the United States district court for
22 the judicial district wherein any act, omission, or
23 transaction constituting a violation of section 203,
24 303 or 403 of this Act occurred or wherein the de-
25 fendant is found or transacts business; or

1 (2) in the case of a civil action described in sub-
2 section (a)(2), in the United States district court for
3 the judicial district wherein the defendant is found
4 or transacts business.

5 In any such civil action process may be served on a defend-
6 ant wherever the defendant may reside or may be found,
7 whether the defendant resides or may be found within the
8 United States or elsewhere.

9 **SEC. 406. LEGAL PROCEEDINGS.**

10 (a) WARRANTS.—

11 (1) The Lead Agency shall seek the consent of
12 the owner or the operator, occupant or agent in
13 charge of the premises to be inspected prior to the
14 initiation of any inspection. Before or after seeking
15 such consent, the Lead Agency may seek a search
16 warrant from any official authorized to issue search
17 warrants. Proceedings regarding the issuance of a
18 search warrant shall be conducted ex parte, unless
19 otherwise requested by the Lead Agency. The Lead
20 Agency shall provide to the official authorized to
21 issue search warrants all appropriate information
22 supplied by the Technical Secretariat to the United
23 States National Authority regarding the basis for
24 the selection of the plant site, plant, or other facility
25 or location for the type of inspection sought, includ-

1 ing, for challenge inspections pursuant to article IX
2 of the Chemical Weapons Convention, appropriate
3 evidence or reasons provided by the requesting state
4 party to the Convention with regard to its concerns
5 about compliance with the Chemical Weapons Con-
6 vention at the facility or location. The Lead Agency
7 shall also provide any other appropriate information
8 available to it relating to the reasonableness of the
9 selection of the plant, plant site, or other facility or
10 location for the inspection.

11 (2) The official authorized to issue search war-
12 rants shall promptly issue a warrant authorizing the
13 requested inspection upon an affidavit submitted by
14 the Lead Agency showing that—

15 (A) the Chemical Weapons Convention is
16 in force for the United States;

17 (B) the plant site, plant, or other facility
18 or location sought to be inspected is subject to
19 the specific type of inspection requested under
20 the Chemical Weapons Convention;

21 (C) the procedures established under the
22 Chemical Weapons Convention and this Act for
23 initiating an inspection have been complied
24 with; and

1 (D) the Lead Agency will ensure that the
2 inspection is conducted in a reasonable manner
3 and will not exceed the scope or duration set
4 forth in or authorized by the Chemical Weapons
5 Convention or this Act.

6 (3) The warrant shall specify the type of in-
7 spection authorized; the purpose of the inspection;
8 the type of plant site, plant, or other facility or loca-
9 tion to be inspected; to the extent possible, the
10 items, documents and areas that may be inspected;
11 the earliest commencement and latest concluding
12 dates and times of the inspection; and the identities
13 of the representatives of the Technical Secretariat, if
14 known, and, if applicable, the representatives of
15 agencies or departments.

16 (b) SUBPOENAS.—In carrying out this Act, the Lead
17 Agency may by subpoena require the attendance and testi-
18 mony of witnesses and the production of reports, papers,
19 documents, answers to questions and other information
20 that the Lead Agency deems necessary. Witnesses shall
21 be paid the same fees and mileage that are paid witnesses
22 in the courts of the United States. In the event of contu-
23 macy, failure or refusal of any person to obey any such
24 subpoena, any district court of the United States in which
25 venue is proper shall have jurisdiction to order any such

1 person to comply with such subpoena. Any failure to obey
2 such an order of the court is punishable by the court as
3 a contempt thereof.

4 (c) INJUNCTIONS AND OTHER ORDERS.—No court
5 shall issue an injunction or other order that would limit
6 the ability of the Technical Secretariat to conduct, or the
7 United States National Authority or the Lead Agency to
8 facilitate, inspections as required or authorized by the
9 Chemical Weapons Convention.

10 **SEC. 407. AUTHORITY.**

11 (a) REGULATIONS.—The Lead Agency may issue
12 such regulations as are necessary to implement and en-
13 force this title and the provisions of the Chemical Weapons
14 Convention, and amend or revise them as necessary.

15 (b) ENFORCEMENT.—The Lead Agency may des-
16 ignate officers or employees of the agency or department
17 to conduct investigations pursuant to this Act. In conduct-
18 ing such investigations, those officers or employees may,
19 to the extent necessary or appropriate for the enforcement
20 of this Act, or for the imposition of any penalty or liability
21 arising under this Act, exercise such authorities as are
22 conferred upon them by other laws of the United States.

23 **SEC. 408. SAVING PROVISION.**

24 The purpose of this Act is to enable the United States
25 to comply with its obligations under the Chemical Weap-

1 ons Convention. Accordingly, in addition to the authorities
2 set forth in this Act, the President is authorized to issue
3 such executive orders, directives or regulations as are nec-
4 essary to fulfill the obligations of the United States under
5 the Chemical Weapons Convention, provided such execu-
6 tive orders, directives or regulations do not exceed the re-
7 quirements specified in the Chemical Weapons Conven-
8 tion.

